

In the Matter of :  
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Creation of a Low Power Radio Service : MM Docket No. 99-25

mandate of the LCRA and is not an effective and efficient way to deal with this problem.<sup>5</sup> As noted by the NAB, the majority of LPFM operators are unsophisticated and lack technical and financial resources.<sup>6</sup> Accordingly, a shutdown order from the Commission may cause confusion or, worse yet, may be ignored completely, thus, denying full-power FM stations the protection the LCRA demands. Moreover, even if an LPFM operator does shut its operations down, there is no guarantee that it can resolve the interference in order to resume operations and it may not have the technical expertise or the financial resources to implement any required modifications.<sup>7</sup> In addition to the harm to existing authorized stations, LPFM operators will be harmed if the Commission primarily relies on the automatic shut down remedy instead of dealing with these issues upfront. If the interference cannot be remedied, these operators will have to permanently shut down their operations after expending their limited financial resources in reliance on the Commission's approval of its application. This would eviscerate the legislative intent behind the LCRA to create a viable and meaningful LPFM service that serves the public interest. To avoid this result, the Commission should apply specific and stringent standards for waivers of the second-adjacent channel spacing rules and should only grant waivers in rare situations where there is clear and convincing evidence that interference will not result from the operation of such an LPFM station.

In order to properly implement the LCRA's mandate to (i) not reduce the minimum co-channel and first and second adjacent channel distance separation requirements; and (ii) to only grant waivers of the second adjacent spacing where the "proposed operations will not result in interference to any authorized radio service",<sup>8</sup> Entercom supports the NAB's position that the FCC should implement a presumption that interference will occur in any second-adjacent

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<sup>5</sup> *Id.*, at 11-12.

<sup>6</sup> *Id.*, at 11.

<sup>7</sup> *Id.*

<sup>8</sup> See LCRA, § 3(b)(2)(A).

allocation with less than the required minimum spacing.<sup>9</sup> This presumption will facilitate review of these waiver requests with careful scrutiny and is consistent with the LCRA's intent of prohibiting any changes to the current second-adjacent spacing requirements with waivers only under very limited circumstances. If there is any doubt that a proposed LPFM facility could result in interference to a full-power station, then a waiver of the second-adjacent spacing should not be granted.

Entercom submits that applications containing a request for a waiver of the second-adjacent spacing rules should not be accepted for filing by the Commission unless the application demonstrates: (i) that there are no other fully spaced channels available; and (ii) that there are no other authorized LPFM stations within a 15 mile radius of the proposed transmitter site.<sup>10</sup> The latter requirement would serve the public interest by balancing the desire of providing LPFM service to the community, while reducing the potential for interference to a full-power FM station through second-adjacent spacing waivers. These requirements should serve as minimum thresholds and only if applicants can satisfy these initial thresholds should they be permitted to proceed with an application for a waiver and the request for an authorization of an LPFM station.

Entercom also supports the NAB's position that in order to satisfy the intent of the LCRA, an applicant's showing that interference will not result by the proposed LPFM facilities should be established by "clear and convincing evidence" and not a lesser standard such as a "preponderance of the evidence" test.<sup>11</sup> Such a standard is fully supportive of the LCRA's strong mandate that waivers "will not result in interference."<sup>12</sup> In order to protect full-power stations,

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<sup>9</sup> See NAB Reply Comments, at 7.

<sup>10</sup> The 15 mile distance is the approximate diameter of an LPFM's coverage area and a waiver of the second-adjacent spacing protections should not be granted if another LPFM is available to serve the area in question. See also NAB Reply Comments, at 7.

<sup>11</sup> *Id.*, at 5.

<sup>12</sup> See LCRA, § 3(b)(2)(A).



Entercom fully supports the NAB's request that affected stations be given notice of any request to waive the second adjacent short-spacing rules.<sup>13</sup>

In response to the Commission's inquiry,<sup>14</sup> Entercom submits that the Commission should not take into consideration whether the proposal supplied by an applicant in its waiver request would eliminate or reduce received interference to the proposed LPFM station as a factor in deciding whether to grant a waiver of the second-adjacent spacing protection. The LCRA confirms that LPFM is a secondary service and must protect authorized stations. The fact that the proposed LPFM station may receive interference should not be used as an excuse to waive the protections mandated by the LCRA for authorized second-adjacent stations. In the limited circumstances where clear and convincing evidence that a properly filed waiver request will not result in interference to an authorized station, then, at that point, it may be appropriate to consider the interference to the applicant as a factor in determining whether the public interest would be served by the grant of the application.

In response to the Commission's inquiry,<sup>15</sup> Entercom submits that the Commission should not take into account whether the proposal by an applicant would avoid a third adjacent short-spacing in its determination of whether to grant a waiver of the second adjacent short-spacing rules. Third-adjacent short spacing protection was eliminated in the LCRA and should not be used as an excuse to grant a waiver of the second-adjacent spacing requirements.

In response to another of the Commission's questions,<sup>16</sup> Entercom submits that the Commission should not take into account whether the proposal for a waiver would result in superior co-channel and first adjacent spacing to other stations because the spacing rules should

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<sup>13</sup> See NAB Reply Comments, at 8 (supporting Comments of Educational Media Foundation, MM Docket No. 9925, at 2 (filed May 7, 2012), at 5-6).

<sup>14</sup> See Notice, at ¶ 19.

<sup>15</sup> See Notice, at ¶ 19.

<sup>16</sup> See Notice, at ¶ 19.

already protect these stations and if interference does occur there is a remedy in the Commission's rules. If the superior spacing issue was a factor used by the Commission to grant waivers of the second adjacent short-spacing rules, then nearly every applicant will include this as a reason to grant the waiver in its request. The spacing rules were designed to protect full power stations and providing greater than the required protection to one station should not be used a reason to create interference to another station.

In order to achieve the LCRA's goal of creating a LPFM service to serve the public while protecting full-power stations, the Commission needs to apply stringent, specific standards when reviewing a request to waive the second adjacent short-spacing rules. Congress was specific and forceful in its mandate to protect full power stations and only grant waivers of the second-adjacent spacing where interference "will not result."<sup>17</sup> The Commission must implement this mandate carefully and with caution in order to not upset the balance required by Congress in the LCRA.

Respectfully submitted,  
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By: 

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<sup>17</sup> See LCRA, § 3(b)(2)(A).